

AMENDED IN SENATE APRIL 28, 2009

SENATE BILL

No. 816

Introduced by Senator Ducheny

February 27, 2009

An act to amend Sections 408, 480.1, 480.2, and 482 of, and to add Section 11935 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 816, as amended, Ducheny. Property taxation.

Existing property tax law requires the assessor to disclose certain appraisal information to specified state and local agencies.

This bill would expand the list of state and local agencies the assessor is required to disclose certain appraisal information to include the county recorder when conducting an investigation to determine whether a documentary transfer tax is ~~due~~ *imposed*.

Existing law requires a corporation, partnership, limited liability company, or other legal entity to file a change in ownership statement within 45 days from the date of the change in control or the change in ownership, or within 45 days from the date of a written request by the State Board of Equalization. Existing law requires a penalty to be imposed if the person or legal entity required to file a change in ownership statement fails to do so within 45 days from the date of a written request by the State Board of Equalization. Existing law requires this penalty to be automatically extinguished if the change in ownership statement is filed no later than 60 days after the date on which the person or legal entity is notified of the penalty.

This bill would, instead, require a penalty to be imposed if the person or legal entity required to file a change in ownership statement fails to do so within 45 days from the earlier of the date of the change in control

or the change in ownership, or the date of a written request by the State Board of Equalization. This bill would also eliminate the requirement to extinguish this penalty.

The Documentary Transfer Act authorizes the board of supervisors of a county or city and county to impose a tax upon specified instruments that transfer specified interests in real property.

This bill would authorize any ordinance adopted by the board of supervisors of a county or city and county for purposes of imposing a documentary transfer tax to include an administrative appeal process for resolution of disputes relating to the imposition of the tax. This bill would prohibit the value of the property established for purposes of determining the amount of documentary transfer tax due from being binding on the determination of the value of that property for property tax purposes.

By changing the manner in which county officials process property tax penalties, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 408 of the Revenue and Taxation Code
2 is amended to read:
3 408. (a) Except as otherwise provided in subdivisions (b), (c),
4 (d), and (e), any information and records in the assessor's office
5 that are not required by law to be kept or prepared by the assessor,
6 disabled veterans' exemption claims, and homeowners' exemption
7 claims, are not public documents and shall not be open to public
8 inspection. Property receiving the homeowners' exemption shall
9 be clearly identified on the assessment roll. The assessor shall
10 maintain records which shall be open to public inspection to
11 identify those claimants who have been granted the homeowners'
12 exemption.

1 (b) The assessor may provide any appraisal data in his or her
2 possession to the assessor of any county.

3 The assessor shall disclose information, furnish abstracts, or
4 permit access to all records in his or her office to law enforcement
5 agencies, the county grand jury, the board of supervisors or their
6 duly authorized agents, employees, or representatives when
7 conducting an investigation of the assessor's office pursuant to
8 Section 25303 of the Government Code, the county recorder when
9 conducting an investigation to determine whether a documentary
10 transfer tax is ~~due~~ *imposed*, the Controller, employees of the
11 Controller for property tax postponement purposes, probate
12 referees, employees of the Franchise Tax Board for tax
13 administration purposes only, staff appraisers of the Department
14 of Financial Institutions, the Department of Transportation, the
15 Department of General Services, the State Board of Equalization,
16 the State Lands Commission, the State Department of Social
17 Services, the Department of Child Support Services, the
18 Department of Water Resources, and other duly authorized
19 legislative or administrative bodies of the state pursuant to their
20 authorization to examine the records. Whenever the assessor
21 discloses information, furnishes abstracts, or permits access to
22 records in his or her office to staff appraisers of the Department
23 of Financial Institutions, the Department of Transportation, the
24 Department of General Services, the State Lands Commission, or
25 the Department of Water Resources pursuant to this section, the
26 department shall reimburse the assessor for any costs incurred as
27 a result thereof.

28 (c) Upon the request of the tax collector, the assessor shall
29 disclose and provide to the tax collector information used in the
30 preparation of that portion of the unsecured roll for which the taxes
31 thereon are delinquent. The tax collector shall certify to the assessor
32 that he or she needs the information requested for the enforcement
33 of the tax lien in collecting those delinquent taxes. Information
34 requested by the tax collector may include social security numbers,
35 and the assessor shall recover from the tax collector his or her
36 actual and reasonable costs for providing the information. The tax
37 collector shall add the costs described in the preceding sentence
38 to the assessee's delinquent tax lien and collect those costs subject
39 to subdivision (e) of Section 2922.

(d) The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. For purposes of this subdivision, "market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the assessor may not display any document relating to the business affairs or property of another.

(e) (1) With respect to information, documents, and records, other than market data as defined in subdivision (d), the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon.

(2) After enrolling an assessment, the assessor shall respond to a written request for information supporting the assessment, including, but not limited to, any appraisal and other data requested by the assessee.

(3) Except as provided in Section 408.1, an assessee, or his or her designated representative, may not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

(f) (1) Permission for the inspection or copying requested pursuant to subdivision (d) or (e) shall be granted as soon as reasonably possible to the assessee or his or her designated representative.

(2) If the assessee, or his or her designated representative, requests the assessor to make copies of any of the requested

1 records, the assessee shall reimburse the assessor for the reasonable
2 costs incurred in reproducing and providing the copies.

3 (3) If the assessor fails to permit the inspection or copying of
4 materials or information as requested pursuant to subdivision (d)
5 or (e) and the assessor introduces any requested materials or
6 information at any assessment appeals board hearing, the assessee
7 or his or her representative may request and shall be granted a
8 continuance for a reasonable period of time. The continuance shall
9 extend the two-year period specified in subdivision (c) of Section
10 1604 for a period of time equal to the period of continuance.

11 SEC. 2. Section 480.1 of the Revenue and Taxation Code is
12 amended to read:

13 480.1. (a) Whenever there is a change in control of any
14 corporation, partnership, limited liability company, or other legal
15 entity, as defined in subdivision (c) of Section 64, a signed change
16 in ownership statement as provided for in subdivision (b), shall be
17 filed by the person or legal entity acquiring ownership control of
18 the corporation, partnership, limited liability company, or other
19 legal entity with the board at its office in Sacramento within 45
20 days from the date of the change in control of the corporation,
21 partnership, limited liability company, or other legal entity. The
22 statement shall list all counties in which the corporation,
23 partnership, limited liability company, or legal entity owns real
24 property.

25 (b) The change in ownership statement as required pursuant to
26 subdivision (a), shall be declared to be true under penalty of perjury
27 and shall give such information relative to the ownership control
28 acquisition transaction as the board shall prescribe after
29 consultation with the California Assessors' Association. The
30 information shall include, but not be limited to, a description of
31 the property owned by the corporation, partnership, limited liability
32 company, or other legal entity, the parties to the transaction, and
33 the date of the ownership control acquisition. The change in
34 ownership statement shall not include any question which is not
35 germane to the assessment function. The statement shall contain
36 a notice that is printed, with the title at least 12-point boldface type
37 and the body in at least 8-point boldface type, in the following
38 form:

“Important Notice”

“The law requires any person or legal entity acquiring ownership control in any corporation, partnership, limited liability company, or other legal entity owning real property in California subject to local property taxation to complete and file a change in ownership statement with the State Board of Equalization at its office in Sacramento. The change in ownership statement must be filed within 45 days from the date of the change in control of a corporation, partnership, limited liability company, or other legal entity. The law further requires that a change in ownership statement be completed and filed whenever a written request is made therefor by the State Board of Equalization, regardless of whether a change in control of the legal entity has occurred. The failure to file a change in ownership statement within 45 days from the earlier of the date of the change in control of the corporation, partnership, limited liability company, or other legal entity, or the date of a written request by the State Board of Equalization, results in a penalty of 10 percent of the taxes applicable to the new base year value reflecting the change in control of the real property owned by the corporation, partnership, limited liability company, or legal entity (or 10 percent of the current year’s taxes on that property if no change in control occurred). This penalty will be added to the assessment roll and shall be collected like any other delinquent property taxes, and be subject to the same penalties for nonpayment.”

(c) In the case of a corporation, the change in ownership statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign such statements on behalf of the corporation. In the case of a partnership, limited liability company, or other legal entity, the statement shall be signed by an officer, partner, manager, or an employee or agent who has been designated in writing by the partnership, limited liability company, or legal entity.

(d) No person or entity acting for or on behalf of the parties to a transfer of real property shall incur liability for the consequences of assistance rendered to the transferee in preparation of any change in ownership statement, and no action may be brought or

1 maintained against any person or entity as a result of that
2 assistance.

3 Nothing in this section shall create a duty, either directly or by
4 implication, that such assistance be rendered by any person or
5 entity acting for or on behalf of parties to a transfer of real property.

6 (e) The board or assessors may inspect any and all records and
7 documents of a corporation, partnership, limited liability company,
8 or legal entity to ascertain whether a change in control as defined
9 in subdivision (c) of Section 64 has occurred. The corporation,
10 partnership, limited liability company, or legal entity shall upon
11 request, make those documents available to the board during
12 normal business hours.

13 SEC. 3. Section 480.2 of the Revenue and Taxation Code is
14 amended to read:

15 480.2. (a) Whenever there is a change in ownership of any
16 corporation, partnership, limited liability company, or other legal
17 entity, as defined in subdivision (d) of Section 64, a signed change
18 in ownership statement as provided in subdivision (b) shall be filed
19 by the corporation, partnership, limited liability company, or other
20 legal entity with the board at its office in Sacramento within 45
21 days from the date of the change in ownership of the corporation,
22 partnership, limited liability company, or other legal entity. The
23 statement shall list all counties in which the corporation,
24 partnership, limited liability company, or legal entity owns real
25 property.

26 (b) The change in ownership statement required pursuant to
27 subdivision (a) shall be declared to be true and under penalty of
28 perjury and shall give such information relative to the ownership
29 interest acquisition transaction as the board shall prescribe after
30 consultation with the California Assessors' Association. The
31 information shall include, but not be limited to, a description of
32 the property owned by the corporation, partnership, limited liability
33 company, or other legal entity, the parties to the transaction, the
34 date of the ownership interest acquisition, and a listing of the
35 "original coowners" of the corporation, partnership, limited liability
36 company, or other legal entity prior to the transaction. The change
37 in ownership statement shall not include any question which is not
38 germane to the assessment function. The statement shall contain
39 a notice that is printed, with the title in at least 12-point boldface

1 type and the body in at least 8-point boldface type, in the following
2 form:

3
4 “Important Notice”
5

6 “The law requires any corporation, partnership, limited liability
7 company, or other legal entity owning real property in California
8 subject to local property taxation and transferring shares or other
9 ownership interest in such legal entity which constitute a change
10 in ownership pursuant to subdivision (d) of Section 64 of the
11 Revenue and Taxation Code to complete and file a change in
12 ownership statement with the State Board of Equalization at its
13 office in Sacramento. The change in ownership statement must be
14 filed within 45 days from the date that shares or other ownership
15 interests representing cumulatively more than 50 percent of the
16 total control or ownership interests in the entity are transferred by
17 any of the original coowners in one or more transactions. The law
18 further requires that a change in ownership statement be completed
19 and filed whenever a written request is made therefor by the State
20 Board of Equalization, regardless of whether a change in ownership
21 of the legal entity has occurred. The failure to file a change in
22 ownership statement within 45 days from the earlier of the date of
23 the change in ownership of the corporation, partnership, limited
24 liability company, or other legal entity, or the date of a written
25 request by the Board of Equalization, results in a penalty of 10
26 percent of the taxes applicable to the new base year value reflecting
27 the change in ownership of the real property owned by the
28 corporation, partnership, limited liability company, or legal entity
29 (or 10 percent of the current year’s taxes on that real property if
30 no change in ownership occurred). This penalty will be added to
31 the assessment roll and shall be collected like any other delinquent
32 property taxes, and be subject to the same penalties for
33 nonpayment.”

34 (c) In the case of a corporation, the change in ownership
35 statement shall be signed either by an officer of the corporation or
36 an employee or agent who has been designated in writing by the
37 board of directors to sign such statements on behalf of the
38 corporation. In the case of a partnership, limited liability company,
39 or other legal entity, the statement shall be signed by an officer,
40 partner, manager, or an employee or agent who has been designated

1 in writing by the partnership, limited liability company, or legal
2 entity.

3 (d) No person or entity acting for or on behalf of the parties to
4 a transfer of real property shall incur liability for the consequences
5 of assistance rendered to the transferee in preparation of any change
6 in ownership statement, and no action may be brought or
7 maintained against any person or entity as a result of that
8 assistance.

9 Nothing in this section shall create a duty, either directly or by
10 implication, that such assistance be rendered by any person or
11 entity acting for or on behalf of parties to a transfer of real property.

12 (e) The board or assessors may inspect any and all records and
13 documents of a corporation, partnership, limited liability company,
14 or legal entity to ascertain whether a change in ownership as
15 defined in subdivision (d) of Section 64 has occurred. The
16 corporation, partnership, limited liability company, or legal entity
17 shall upon request, make those documents available to the board
18 during normal business hours.

19 SEC. 4. Section 482 of the Revenue and Taxation Code is
20 amended to read:

21 482. (a) If a person or legal entity required to file a statement
22 described in Section 480 fails to do so within 45 days from the
23 date of a written request by the assessor, a penalty of either: (1)
24 one hundred dollars (\$100), or (2) 10 percent of the taxes applicable
25 to the new base year value reflecting the change in ownership of
26 the real property or manufactured home, whichever is greater, but
27 not to exceed two thousand five hundred dollars (\$2,500) if the
28 failure to file was not willful, shall, except as otherwise provided
29 in this section, be added to the assessment made on the roll. The
30 penalty shall apply for failure to file a complete change in
31 ownership statement notwithstanding the fact that the assessor
32 determines that no change in ownership has occurred as defined
33 in Chapter 2 (commencing with Section 60) of Part 0.5. The penalty
34 may also be applied if after a request the transferee files an
35 incomplete statement and does not supply the missing information
36 upon a second request.

37 (b) If a person or legal entity required to file a statement
38 described in Section 480.1 or 480.2 fails to do so within 45 days
39 from the earlier date of the change in control or the change in
40 ownership of the corporation, partnership, limited liability

1 company, or other legal entity, or the date of a written request by
2 the State Board of Equalization, a penalty of 10 percent of the
3 taxes applicable to the new base year value reflecting the change
4 in control or change in ownership of the real property owned by
5 the corporation, partnership, or legal entity, or 10 percent of the
6 current year's taxes on that property if no change in control or
7 change in ownership occurred, shall be added to the assessment
8 made on the roll. The penalty shall apply for failure to file a
9 complete statement notwithstanding the fact that the board
10 determines that no change in control or change in ownership has
11 occurred as defined in subdivision (c) or (d) of Section 64. The
12 penalty may also be applied if after a request the person or legal
13 entity files an incomplete statement and does not supply the missing
14 information upon a second request. That penalty shall be in lieu
15 of the penalty provisions of subdivision (a).

16 (c) The penalty for failure to file a timely statement pursuant to
17 Sections 480, 480.1, and 480.2 for any one transfer may be imposed
18 only one time, even though the assessor may initiate a request as
19 often as he or she deems necessary.

20 (d) The penalty shall be added to the roll in the same manner
21 as a special assessment and treated, collected, and subject to the
22 same penalties for the delinquency as all other taxes on the roll in
23 which it is entered.

24 (1) When the transfer to be reported under this section is of a
25 portion of a property or parcel appearing on the roll during the
26 fiscal year in which the 45-day period expires, the current year's
27 taxes shall be prorated so the penalty will be computed on the
28 proportion of property which has transferred.

29 (2) Any penalty added to the roll pursuant to this section
30 between January 1 and June 30 may be entered either on the
31 unsecured roll or the roll being prepared. After January 1, the
32 penalty may be added to the current roll only with the approval of
33 the tax collector.

34 (3) If the property is transferred or conveyed to a bona fide
35 purchaser for value or becomes subject to a lien of a bona fide
36 encumbrancer for value after the transfer of ownership resulting
37 in the imposition of the penalty and before the enrollment of the
38 penalty, the penalty shall be entered on the unsecured roll in the
39 name of the transferee whose failure to file the change in ownership
40 statement resulted in the imposition of the penalty.

1 (e) When a penalty imposed pursuant to this section is entered
2 on the unsecured roll, the tax collector may immediately file a
3 certificate authorized by Section 2191.3.

4 (f) Notice of any penalty added to either the secured or
5 unsecured roll pursuant to this section shall be mailed by the
6 assessor to the transferee at his or her address contained in any
7 recorded instrument or document evidencing a transfer of an
8 interest in real property or manufactured home or at any address
9 reasonably known to the assessor.

10 SEC. 5. Section 11935 is added to the Revenue and Taxation
11 Code, to read:

12 11935. (a) Any ordinance adopted pursuant to this part may
13 include an administrative appeal process for resolution of disputes
14 related to the documentary transfer tax.

15 (b) Whether the amount of documentary transfer tax is
16 determined by an administrative appeal process or established by
17 a court of law, the value of the property established for purposes
18 of determining the amount of documentary transfer tax due shall
19 not be binding on the determination of the value of that property
20 for property tax purposes by the county assessor, by an assessment
21 appeals board, or by a court of law reviewing property tax values
22 established by an assessment appeals board.

23 SEC. 6. If the Commission on State Mandates determines that
24 this act contains costs mandated by the state, reimbursement to
25 local agencies and school districts for those costs shall be made
26 pursuant to Part 7 (commencing with Section 17500) of Division
27 4 of Title 2 of the Government Code.